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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,549	04/10/2001	James T. English	UMO 1521.1	8198
321	7590	06/10/2004	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			WESSENDORF, TERESA D	
			ART UNIT	PAPER NUMBER
			1639	

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/829,549

Applicant(s)

ENGLISH ET AL.

Examiner

T. D. Wessendorf

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 3/15/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 32-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 32-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

Claims 1-9 and 32-47 are pending.

Claims 10-31 have been cancelled.

Claims 1-9 and 32-47 are under examination.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey (WO 99/51780) for reasons advanced in the last office action.

Response to Arguments

It is argued that Massey et al discloses that a target cell is a tumor cell or a pathogen or protozoan-infected cell. It is further argued that the peptides identified by the method of claim 1 are encoded by random oligonucleotides expressed by a vector, which is capable of expressing said peptides on its

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surface and transfecting a host cell. In contrast, Massey et al require that the peptide expression library be expressed on an immunogenic carrier in order to be able to generate an immunological response against the target cell. It is additionally argued that the anti-fungal peptides identified by the method of claim 1 inhibits fungal growth/proliferation by a direct interaction. In Massey et al the inhibition or removal of the target cell occurs through an immunological response. Thus, Massey, is argued, to teach away from the claimed invention.

In response, applicants' argument that the method of claim 1 inhibits fungal growth/proliferation by a direct interaction is not commensurate in scope with said claim. Claim 1 does not recite for the argued limitation of inhibition. Thus, whether the mechanism of growth inhibition of fungus is by direct or indirect method as taught by Massey is immaterial. Furthermore, claim 4 of the Massey reference specifically recites a fungus. The carrier described by Massey is but the vector as claimed, e.g., phage except termed as a carrier. It is well known in the art that phage functions similarly as a carrier for the peptide.

The rejection with respect to Gyuris and Gough references has been obviated with applicants' arguments.

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Newly submitted claims 32-34, 37-41, 43, 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey in view of Gough.

Massey is discussed above. Massey does not disclose the fungus as the *Phytophthora* genus or the species as recited in claim 34. Gough discloses said *Phytophthora* against a library to select antibodies specific for native external isotopes. Gough discloses as page 104, the different species of *phytophthora* inter alia, *P. cactorum*. Gough discloses at page 107 that the method of isolating members from a library containing phage is specifically directed against the native conformation of surface-accessible antigens that may provide new tools to probe and manipulate pathogens. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ as fungus, *Phytophthora* in the method of Massey for the advantages taught by Gough. Furthermore, as disclosed by Gough the interest in this plant pathogen *Phytophthora* has intensified in recent years due to dramatically increasing losses due to late blight in many parts of the world. Thus, the elimination of the losses in plant caused by this pathogen would motivate one having skilled in the art to eradicate fungus, specifically the *phytophthora* causing plant disease.

Allowable Subject Matter

Claims 35, 36, 42 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

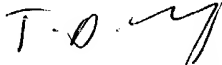
Any inquiry concerning this communication or earlier communications from the examiner should be directed to T. D. Wessendorf whose telephone number is (703) 308-3967. The examiner can normally be reached on Flexitime.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang can be reached on (703) 306-3217. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


T. D. Wessendorf
Primary Examiner
Art Unit 1639

tdw
June 8, 2004